

# APPENDIX

## CALIFORNIA

Stats. 1913, p. 245; Cal. Gen. Laws (Deering, 1923), p. 538. An act to provide indemnity to persons erroneously convicted of felonies in the state of California.

Section 1. *Claim of persons erroneously convicted.* Any person who, having been convicted of any crime against the state of California amounting to a felony, and having been imprisoned therefor in a state prison of this state shall hereafter, on a retrial of the case, or on reversal on appeal of the final judgment of conviction, be acquitted or discharged for the reason that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, or who shall hereafter be granted a pardon by the governor of this state for either of the foregoing reasons, or who, being innocent of the crime with which he was charged for either of the foregoing reasons, shall have served the term for which he was imprisoned, may, under the conditions hereinafter provided, present a claim against the state to the state board of control for the pecuniary injury sustained by him through such erroneous conviction and imprisonment.

Sec. 2. *Presented to board of control.* Such claim, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, must be presented by the claimant to the board of control within a period of six months after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment, and at least four months prior to the next meeting of the legislature of this state; and no claim not so presented shall be considered by the board of control.

Sec. 3. *Hearing on claim.* Upon presentation of any such claim, the board of control shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the attorney general of this state at least fifteen days prior to the time fixed for such hearing.

Sec. 4. *Proof of claimant.* On such hearing the claimant shall introduce evidence in support of the claim, and the attorney general may introduce evidence in opposition thereto. The claimant must prove the facts set forth in the statement constituting the claim, including the fact that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, the fact that he did not, by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of his arrest or conviction for the crime with which he was charged, and the pecuniary injury sustained by him through his erroneous conviction and imprisonment.

Sec. 5. *Board to report approved claim to legislature.* If the board of control shall be satisfied from the evidence that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant did not, by any act or omission either intentionally or negligently, contribute to the bringing about of his arrest or conviction, and that the claimant has sustained pecuniary injury through his erroneous conviction and imprisonment, it

shall, with the sanction of the governor of this state, report the facts of the case and its conclusions to the next legislature of this state, with a recommendation that an appropriation be made by the legislature for the purpose of indemnifying the claimant for such pecuniary injury; but the amount of the appropriation so recommended shall not exceed in any case, the sum of five thousand dollars (\$5,000).

Sec. 6. *Statement to controller.* The board of control shall make up its report and recommendation and shall give to the controller of this state a statement showing its recommendations for appropriations under the provisions of this act, as provided by the law in cases of other claimants against this state for which no appropriations have been made.

Sec. 7. *Rules.* The board of control is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this act.

## WISCONSIN

Wis. Stats. (1913), chapter 189; Wis. Stats. (1929), p. 2071, chapter 285, actions against state.

285.05. *Compensation for imprisonment of innocent persons.* (1) The governor and the members of the state board of control are hereby constituted a board to be known as the board for the relief of persons who have served terms of imprisonment upon conviction for an offense or crime against the state of which they are innocent. The secretary of the state board of control shall be the secretary of the board hereby created.

(2) Any person who hereafter shall have served a term of imprisonment under conviction for a crime or offense against the state, of which crime or offense he claims to have been innocent, or any person who shall have been pardoned by the governor on the ground of innocence and whose term of imprisonment shall thereby have been decreased, may petition the board constituted in this section for the allowance from the state of compensation for such wrongful imprisonment.

(3) Such board shall hold a hearing on such petition and shall cause evidence of the character hereinafter mentioned to be produced before it. After hearing the evidence, the board shall make a finding that it is clear beyond a reasonable doubt that the petitioner was innocent of the crime or offense for which he suffered imprisonment, or that it is not clear beyond a reasonable doubt that the petitioner was innocent of the crime or offense for which he was imprisoned. Upon the hearing before the board the record of the trial in which the conviction was had may be presented to the board for the purpose of enabling the board to understand the situation, but the finding of the board shall be based only on such evidence or circumstances as have been discovered or have arisen since the trial and conviction of the petitioner of the crime or offense for which he claims to have suffered wrongful imprisonment.

(4) If the board shall find that the petitioner was innocent of the crime or offense for which he has suffered imprisonment, and that he did not by his act or failure to act contribute to bring about the conviction and imprisonment for which he seeks compensation, the board shall proceed to find the amount which will compensate the petitioner for his wrongful

imprisonment. Such board may award a compensation to the petitioner so found innocent of not to exceed five thousand dollars in any case, and at a rate of compensation not greater than fifteen hundred dollars per year for the imprisonment so unjustly suffered. If the board shall find that the amount they may be able to award will not be an adequate compensation to the petitioner they shall report an amount to the legislature which they shall deem to be adequate and shall recommend the appropriation by the legislature to the petitioner of the amount in excess of the amount they may have awarded.

(5) The board shall keep a full and complete record of its proceedings in each case and of all the evidence produced before them. The findings and the award of the board shall be subject to review on an appeal, by the circuit court for Dane county, but the appeal shall be subject to the same limitations as apply to the findings and awards made by the board. An appeal to the supreme court from the judgment of the circuit court may be taken in the same manner as provided in section 102.25 of the statutes.

## DRAFT BILL TO GRANT RELIEF TO PERSONS ERRONEOUSLY CONVICTED IN COURTS OF THE UNITED STATES

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who, having been convicted of any crime or offense against the United States, shall hereafter, on appeal from the judgment of conviction or on the retrial or rehearing of his case, be found to have been innocent of the crime with which he was charged and not guilty of any other offense against the United States, or who, after inquiry by the Executive has received a pardon on the ground of innocence, may, under the conditions hereinafter mentioned, apply by petition for indemnification for the pecuniary injury he has sustained through his erroneous conviction and imprisonment.

The bill is limited to convictions in the Federal courts—that is, crimes or offenses against the United States. It is limited to those only who have been *imprisoned* under a judgment of conviction, and whose innocence is subsequently established. The right to the relief is discretionary only. It is called here indemnification, although some other word may be substituted. The relief is limited to the *pecuniary* injury, thus excluding all compensations for *moral* injury, which in case of conviction of crime is generally the more serious element of injury. This limitation follows in general the European statutes, and has as its object the restriction to its narrowest limits (while acknowledging the principle) of a demand on the state treasury. When the innocence is established after the wrongful conviction *plus* imprisonment, the indemnity should cover the injury during the whole period of detention, both before and after trial. The expression “of the crime with which he was charged

*and not guilty of any other offense against the United States*” has been used to cover cases where the indictment may fail on the original count, but claimant may yet be guilty of another or a minor offense. Thus, if the accused has committed *any* offense against the United States, his right to relief is barred. Some may raise the objection that the right to petition the United States is granted in the bill, even though the accused may have a private right of action against an individual for false imprisonment or malicious prosecution. It is not considered desirable to insert this limitation in the bill, though if there is a general feeling that the accused must exhaust all his other remedies, either as a bar to this relief or as a condition precedent to demanding it, words to this effect will have to be inserted. It is believed that the Court of Claims should take into consideration, under section 9, all matters connected with the case, including the other remedies of the accused, whether he had a possible right of action against third persons, how much that right may have been worth, the possibility of securing and executing judgment, and particularly the extent of the *State's* participation in the wrong inflicted on the individual.

The restrictions of the Wisconsin statute, which was construed to mean that the whole term of imprisonment as fixed by the trial or appellate court must have been served before the right to indemnity accrues, or that a term shortened by any other means than a Governor's pardon was not included within the statute, seem without justification. Sections 1 and 2 of the Wisconsin statute might usefully be amended, so as to delete the words “term of” before “imprisonment”; and to avoid the inference that only a Governor's pardon can effect release on the ground of innocence, the second section might be amended to read as follows:

(2) Any person who shall have served imprisonment under conviction for a crime or offense against the state and who, on a retrial of the case or reversal on appeal of the judgment of conviction or on a pardon by the Governor, shall be acquitted or discharged or released from imprisonment on the ground [that the crime for which he was convicted was either not committed at all or if committed, was not committed by him, or] of innocence, may [petition the board constituted in this Act (section) for the allowance from the state of compensation for such wrongful imprisonment, or] present to said board a claim against the state for the pecuniary injury sustained by him through such erroneous conviction and imprisonment.

Sec. 2. That the claimant may, within six months after he has been finally acquitted or pardoned on the ground of innocence, petition the Court of Claims for the relief granted in this Act.

A very short statute of limitations is fixed, following the European statutes in this respect. The claim is to be brought before the Court of Claims, which has been granted jurisdiction over pecuniary

claims against the United States. (See, for example, the French spoliations act, 23 Stat. L., 283, and the Attorney-General's draft and Report of a *Federal Tort Claims Bill* [1932].)

Sec. 3. That the court is hereby authorized to make all needful rules and regulations, consistent with the law, for executing the provisions hereof.

This follows in general the provisions of section 2 of the French spoliations act (23 Stat. L., 283).

Sec. 4. That the claimant shall have the burden of proving his innocence, in that he must show that the act with which he was charged was not committed at all, or, if committed, was not committed by the accused.

The cases in which the relief can be claimed are limited here to those only in which the claimant shall affirmatively prove his innocence. Hence only a flagrant case of injustice could be brought within the terms of this section. In providing that the claimant must show that the crime was not committed at all, or, if committed, was not committed by the accused, the provisions of the law of Sweden, Hungary, and California have been followed. It is likewise intended to limit the relief to cases in which the justice of an award is obvious.

Sec. 5. That the claimant must show that he has not, either intentionally or by willful misconduct or negligence, contributed to bring about his arrest or conviction.

This carries out simply the equitable maxim that no one shall profit by his own wrong or come into court with unclean hands. It follows the provisions generally found in the European statutes. Nevertheless, it is important to take account of the fact that false confessions have been exacted from innocent people, as in the Johnson (p. 112) and Stielow (p. 245) cases; and that innocent people have occasionally advanced a false alibi or even kept silent. Where the act or failure to act is excusable, it should not be deemed a bar to relief, even if it may have contributed to the conviction. Hence the words "intentionally" and "willful" are important. The Wisconsin Act might be amended in this respect.

Sec. 6. That the Court of Claims shall examine the validity and amount of all claims included within the terms of this Act; they shall receive all suitable testimony on oath or affirmation and all other proper evidence; and they shall report all such conclusions of fact and law as in their judgment may affect the right to relief.

In its general provisions this section follows section 3 of the French spoliations act (23 Stat. L., 283). Under it the Court of Claims would receive the record from the trial court, the appellate court, and the second trial court, in order to determine the justice

of relief in the case. They should also receive, under appropriate regulations, the records of the Pardon Attorney of the Department of Justice and of the President, in cases of presidential pardon. They may also call for oral or written testimony whenever desired. This section gives the court full power and opportunity to arrive at the facts.

Sec. 7. That upon proof satisfactory to the Court of Claims that the claimant is unable to advance the costs of court and of process, the cost of obtaining and printing the record of the original proceedings and of securing the attendance of such witnesses as the chief justice or the presiding judge of the Court of Claims shall certify to be necessary, and the service of all notices required by this Act, shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a duly authenticated order, certified by the clerk of the Court of Claims and signed by the chief justice or, in his absence, by the presiding judge of said court.

The claimant will in most cases be a poor person and it is desirable that the expense of bringing up the record should not fall as a burden upon him. This expense might, in fact, prevent the poor claimant from bringing suit at all. It should, therefore, be provided that in such cases where the chief justice, or the presiding judge of the Court of Claims, considers that the claimant has made out a *prima facie* case of erroneous conviction and his own innocence, the expense of bringing up the record shall be borne by the Treasury. Where the claimant does not make out a *prima facie* case coming within the provisions of this Act, the chief justice of the Court of Claims would not make the certification necessary to have the Treasury bear the expense.

Sec. 8. That the court shall cause notice of all petitions presented under this Act to be served on the Attorney General of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken, to have access to all testimony taken under this Act, and to be heard by the court. He shall resist all claims presented under this Act by all proper legal defenses.

The purpose of this section is self-explanatory. In terminology it follows the provisions of section 4 of the French spoliations act (23 Stat. L., 284).

Sec. 9. That the Court of Claims in granting or refusing the relief demanded shall take into consideration all the circumstances of the case which may defeat or in any other way affect the right to and the amount of the relief herein provided for, but in no case shall the relief granted exceed \$5,000.

The granting of the relief is *discretionary*, as was stated in the beginning. Most of the European statutes generally present a list

of conditions which shall bar or limit the right to the relief, but it is believed best to follow the French law, which makes no mention of limiting conditions, but leaves the judge to determine from all the circumstances of the case whether any, and how much, relief is proper. The relief is limited to \$5,000. It would not be inappropriate to follow the model of the North Dakota and Wisconsin Acts by providing that, if \$5,000 seems to the Court an inadequate indemnity in a particular case, they may recommend to Congress a larger sum.

The Court of Claims is given jurisdiction over the matter in preference to the trial court, or the appellate court, or the second trial court (which presumably could judge better of the merits and circumstances of the case), in order to maintain the traditions of American judicial procedure. If the jury or trial court were given the right to pronounce on the propriety of an award in a case of acquittal (as is the case in some of the European countries), it would bring into American law a new kind of acquittal, in which the jury or judge could acquit *with degrees of approval or sympathy*. The distinction would be an odious one to make. While it would be desirable to have the benefit of the special knowledge of the case secured by the trial court or the jury, still it is better to forego this advantage for the sake of conformity with legal custom and leave the establishment of the damage to a new court conforming in its jurisdiction in this case to its jurisdiction in similar cases of claims against the United States.

In all respects (*a*) as to the person indemnified, (*b*) as to what he must show, (*c*) as to the amount of the indemnity, and (*d*) as to the discretionary character of the relief, the indemnity has been limited to the most flagrant cases of unjust conviction and deserving relief.

Sec. 10. That in all cases of final judgments by the Court of Claims the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice or, in his absence, by the presiding judge of said court.